IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Writ Petition No. 1724 of 2001 (M/B)
(Old No. 32737/1998)

Date of decision: 28th September, 2004

For the Approval of:

Hon'ble Chief Justice V.S. Sirpurkar

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to the reporters for reporting? ( )

- Whether the reporter be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1724 of 2001 (M/B)
(Old No. 32737/1998)

Junior Angels Model School,
A registered society,
32/1, 33/1, D-1D-2, Civil Lines,
Rudrapur, District Udham Singh Nagar,
Through Lalit Malik its
Prabandhak/Vyavasthapak …… Petitioner

Versus

The Collector, Udham Singh Nagar
& another. …….. Respondents

……

Mr. Siddharth Sah, learned counsel for the petitioner.
Mr. K.P. Upadhyaya, learned Brief Holder for the State.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Irshad Hussain, J.

(Per Hon'ble the Chief Justice)

1. Heard learned counsel for the parties.

2. Originally, the writ petition No. 29641 of 1998 was filed by the petitioner with the following prayers:-

i. To issue a writ, order or direction in the nature of certiorari quashing the order passed by the Collector, Udham Singh Nagar dated 31.08.1998 and the order of communication dated 31.08.1998 passed by the Additional Collector (Nazul), Udham Singh Nagar (Annexures II & I respectively to the writ petition).
ii. To issue a writ, order or direction in the nature of mandamus to the respondents No. 1 and 2 not to demolish the petitioner-school's building in pursuance of the impugned order dated 31.08.1998.
iii. To issue a writ, order or direction in the nature of mandamus directing the respondent No. 1 to decide the petitioner's representation dated 5.9.1998 filed against the impugned order passed by the respondent No. 1 dated 31.08.1998.

3. In that writ petition, the petitioner claimed to be a school and had sought the quashing of the order dated 31.08.1998, which was passed by the Collector as per the directions given by the Allahabad High Court in earlier writ petition No. 22997 of 1998. In that writ petition also, the petitioner has challenged the auction proceedings

started by the Government in respect of the Nazul Plot No. 33/1. The High court had directed the Collector to hear the side of the petitioner again because the petitioner had claimed to be the occupier of the said plot and it was also pointed out that on that plot, the petitioner's school was constructed and the petitioner was not given any hearing before the decision to auction the plot. It seems that in pursuance of the order passed in writ petition No. 22997 of 1998, the petitioner was heard and the Collector passed an order dated 31.08.1998, whereby the objection raised by the petitioner was rejected.

4. Then , the petitioner filed the writ petition No. 29641 of 1998 before the Allahabad High Court, the prayers of which, we have already quoted above. During the pendency, the petitioner showed readiness to purchase the plot at market rate. The petitioner also wanted to save the constructions made by him and therefore, the Allahabad High Court passed an interim order dated 14.09.1998 and had directed the petitioner to deposit Rs. 18,00,000/- (Rupees Eighteen Lakhs only) for stopping demolition. However, those Rs. 18,00,000/- were never deposited and it is obvious that the building of the petitioner was demolished and the possession of the plot was taken. Even this writ petition has not been dismissed on 7.05.2004. We have deliberately quoted the prayers in that writ petition to compare the prayers in the present writ petition. The prayers in the present writ petition are as under:

a. Issue a writ, order or direction in the nature of certiorari to quash the notice dated 3.10.1998, issued by the respondent No. 2 (Annexure 1) for auction sale of the Nazul land No. 33/1, covered by the petitioner school building, published in Amar Ujala on 6.10.1998.
b. Issue a writ, order or direction in the nature of mandamus against the respondents to pay compensation of Rs. 5 lakhs for demolishing the petitioner school building of the petitioner's society on the same day in the evening from 6.00 P.M. on 3.10.1998 till 4.10.1998 inasmuch as the action of the respondents is malafide with sole intention to make the writ petition No. 29641 of 1998 of the petitioner as infructuous.

5. Now, it will be clear that after the State Government obtained the possession after removing encroachment by demolishing the school and the illegal construction on the plot No. 33/1, the State Government wanted to sell that plot by auction and for that purpose, issued a fresh notice dated 3.10.1998. The petitioner, precisely, wanted to stop this auction. On 09.10.1998 the Allahabad High Court passed the first order on this writ petition without admitting it. That order is quoted below:

> "Put up this writ petition under heading 'For Admission on 16th October, 1998 so that the learned standing counsel Mr. H.R. Misra may obtain instructions.
>
> The auction will be held but it will not be made final till further orders of the Court, if the petitioner deposits a sum of Rs. 1,80,000/- now by Wednesday.
>
> The office is directed to hand over a copy of this Order by Monday dated 12th October, 1998 to Mr. H.R. Mishra, learned standing counsel."

6 The petitioner's claim is that he has paid Rs. 1,80,000/- as per that order. Now, the question is as to whether the petition is to be admitted or not. One look at the petition suggests that the petitioner did not have even the ghost of right. The petitioner was purely an encroacher on the said plot and had gone to the extent of constructing a building thereupon. Eventually, when the Government sought to remove the petitioner, then the petitioner tried his level best and even offered to pay its market price of Rs. 18,00,000/- and the Court, in earlier writ petition No. 29641 of 1998, had given that opportunity to the petitioner, however, the petitioner lost that opportunity to the petitioner, however, the petitioner lost that opportunity and did not pay the said amount of Rs. 18,00,000/-. Eventually, on account of the failure of the petitioner, the said construction was demolished and the encroachment by the petitioner was removed from the said Nazul Plot No. 33/1. It is clear that the petitioner, thus, did not have any nexus with the said land and he was only an encroacher.

7. The learned counsel for the petitioner, however, seeks to save his skin on the basis of a Government Order in which there are some provisions made for the renewal of Pattas. That Government Order is

dated 17th February, 1996. We have gone through the whole Government Order and we are convinced that the said order has got nothing to do with the present controversy for the simple reason that therein, provision is only for the renewal of Pattas on some particular terms. Now, it is an accepted case that the petitioner did not have any Patta, whatsoever, in respect of this land and his possession on the land was totally unauthorised and that of an encroacher. Therefore, the said Government Order does not help the petitioner at all.

8. Beyond this, the petitioner, now, wants to take advantage of the first order passed by the Allahabad High Court of permitting him to deposit Rs. 1,80,000/-. Unfortunately, even that payment would not help the petitioner because the Court seems to have passed that order on the basis of the afore-mentioned Government Order, which we are have just now referred and we are thoroughly convinced that the said Government Order has got nothing to do with the present controversy. Therefore, even if the Court had ordered the petitioner to deposit Rs. 1,80,000/-, that would not create any right in favour of the petitioner.

9. In their counter affidavit, the then U.P. Government has pointed out all these facts and has shown, very specifically, that the petitioner, always, was an encroacher on the said plot. It is also pointed out that though an opportunity was given to the petitioner in writ petition No. 29641 of 1998 of purchasing the plot by depositing Rs. 18,00,000/-, that opportunity was also lost by the petitioner and in the process, the petitioner's construction was demolished. It is asserted in that counter affidavit that on the basis of the petitioner's failure to deposit Rs. 18,00,000/-, the Administration removed all the encroachments from the said plot No. 33/1.

10. Therefore by that, the position was back to square one, where the plot had become available to the Administration without any encroachment. Therefore, the Administration was perfectly justified in putting the said plot to the auction and the petitioner could not have

objected to the said auction as the encroachers have no right in law even to object for the disposal of the plot, which the petitioner had, one time, encroached and which encroachment had already been removed by the State Administration. We are, therefore, thoroughly convinced that the writ petition has no merits and it must be dismissed.

11. Accordingly, the writ petition is dismissed. However, the money deposited by the petitioner shall be returned to him within a period of 15 days from today.

(Irshad Hussain, J.) **(V.S.Sirpurkar, C.J.)**
28.09.2004 **28.09.2004**

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